

## **CITY OF TAKOMA PARK, MARYLAND**

### **INTERVIEWS, SPECIAL SESSION, WORKSESSION & CLOSED SESSION OF THE CITY COUNCIL**

**Monday, July 15, 2002**

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Closed Session 7/8/02 - Moved by Austin-Lane; seconded by Dawes. The Council voted unanimously to convene in Closed Session at 10:38 p.m. in the Conference Room of the Municipal Building. OFFICIALS PRESENT: Porter, Austin-Lane, Dawes, Elrich, Maack, Stewart, Williams. STAFF PRESENT: Finn. The Council discussed the City Manager's evaluation. The City Manager briefed the Council on what has been accomplished over the past year (Authority: Annotated Code of Maryland, State Government Article, Section 10-508(a)(12), (1)(i)).

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#### **OFFICIALS PRESENT:**

Mayor Porter

Councilmember Austin-Lane

Councilmember Dawes

Councilmember Elrich

Councilmember Maack

Councilmember Stewart

Councilmember Williams

City Manager Finn

City Clerk Waters

City Attorney Silber

Assistant City Attorney Perlman

Community & Government Liaison Ludlow

Acting Police Chief Creamer

ECD Director Daines

Landlord-Tenant Coordinator Walker

The Council convened at 7:35 p.m. in the Council Chambers of the Municipal Building, 7500 Maple Avenue, Takoma Park, Maryland.

#### **COUNCIL ANNOUNCEMENTS**

Mayor Porter announced that about a week ago on Saturday, "Doc" Cravens passed away. He was an active individual in the City and someone who was very active on the Takoma Tower Residents Association. He was involved in the community center planning and had been recognized by the Council as an Honorary life member of the Public Safety Citizens Advisory Committee (PSCAC). The community will feel his loss. Ms. Porter said that she attended a memorial service today and read a Proclamation in his memory. The Mayor Proclamation will be entered in the official record at the appropriate time.

## **INTERVIEWS**

### **1. Commission on Landlord-Tenant Affairs (COLTA) - Mary Stover.**

Ms. Porter noted Ms. Stover's continued interest in serving on COLTA. She also noted that there are a couple of individuals who are up for reappointment, but since they have been interviewed within the last 12 months, Council policy does not require them to be re-interviewed at this time.

The Council interviewed Ms. Stover for reappointment to the Commission.

### **2. Nuclear Free Takoma Park Committee (NFZ) - Jim Kuhn.**

Ms. Waters noted distribution of Mr. Kuhn's resume.

The Council interviewed Mr. Kuhn for appointment to the Committee.

## **SPECIAL SESSION**

The Council convened in Special Session at 7:45 p.m.

### **3. Resolution re: Local Control Legal Issues (Montgomery College Expansion).**

Ms. Porter explained the resolution. Council has discussed this item in Closed Session when the legal issues were being explored, but this is the first public discussion.

City Attorney Silber provided some background. There are some law suits pending between Montgomery College and a number of citizen groups, which came to the City's attention. The college made an argument that seemed to be an attempt to preempt any local control over expansion activities. The City felt that the sweeping claim being made by the college could be detrimental to the City in the future, from local control perspective. Consequently, we got into the discussion with representatives from the college and Historic Takoma. She noted the issue of the foot path and bridge, which has a footing in the Jessup-Blair park (outside the City), but clarified that the City's concern was with the long-term implications of the college's position that it is a State entity and beyond local control. The college understands our position and has agreed to a permanent agreement that will go into City and County records, indicating that they will go through a full review by the Historic Preservation Commission and that they will consult with the City about any major changes on the campus within the City's boundaries. They have committed themselves to the local controls by agreement.

Lorraine Pearsall (President, Historic Takoma) added that the agreement also provides protection in the future for areas that are not yet incorporated in the City but which may later become part of the City through annexation (e.g., Islington).

Councilmember Williams confirmed that the language is such that it is not limited to the City's current powers, but that it is open to the addition of possible future powers.

Ms. Silber agreed. The list of powers in the agreement is a good, broad list of our local powers, and one of the best she has seen as being recognized by another entity. The college was also willing to amend its court pleadings to make them less offensive to the City--making it clear that the pleading only deals with this very specific college expansion and would not apply to any future expansions. We are feeling that we have a good agreement among all of the parties. We are asking for the Council to authorize the Mayor to sign this agreement (may not be in this precise text, but the intent will be maintained). The governing bodies of the other parties are meeting this week to approve the language.

Councilmember Austin-Lane asked for further explanation of the pleadings.

Ms. Silber explained that any court case starts with a list of facts and what the Plaintiff is seeking to make right. In this case, the Plaintiff was requesting a Declaratory Judgement. The end of a complaint is always a Prayer for Relief--i.e., what is being asked of the court. We have negotiated a change to the Prayer for Relief to: (1) specify that it is only this campus expansion that is being addressed, and (2) it is not to overcome any pre-existing agreements that the college has with other entities. This agreement, that we would now have with the college, would stand despite any Declaratory Judgement entered by the court.

Ms. Porter confirmed that we are asking the college to amend their pleadings as indicated in the materials distributed to the Council and that we are not getting involved in the court case itself.

Ms. Silber agreed. All of the agreements in front of the Council tonight are in lieu of intervening in the law suit. We had once felt that we might need to intervene to protect our long-term interests.

Ms. Porter clarified that we were considering entering the law suit in a very limited, specific way to only address the local authority legal issues. We were not talking about the items in the case that are outside of our jurisdiction.

Ms. Silber stated that legal counsel believes from their research that the college is both a local and in some ways, a State entity. We did not want there to be any precedent value to them claiming to be a full State entity.

Councilmember Maack said that with their declaration of State power and the understanding that

we are making some change to that judgement, the agreement would now make the college subject to local permit review. Is there any loop-hole in "...subject to local review..." language? Could the State interpret this in a different way if there is a conflict in opinions about a future review process?

Ms. Silber explained that the way this works, there would be local jurisdiction. However, it is also true that the State's Historic Trust has some jurisdiction. If there is some conflict in the decision-making, the State would probably prevail. However, before that would happen, there would be an opportunity to develop the case at the local level. She noted her understanding that conflicts can be resolved through cooperation.

Ms. Pearsall commended Ms. Silber's summary of the issue. Historic Takoma was very concerned when we realized that the college was making such broad sweeping statements to the Plaintiffs. It was very disturbing. The reason we have a Historic Preservation Law in Montgomery County is because of the college. It became clear that the law suit was not really focused on the local control issue, but more on the Blair will issues. Ms. Pearsall said that she is pleased that the attorneys were able to negotiate an agreement and that we will have some discussions as the college proceeds with renovations to the campus. This is a positive result. The agreement gives us some protection and will further protect us in the future, by narrowing the arguments--the issue of local control--even into Silver Spring.

Ms. Porter gave credit to Ms. Pearsall for bringing this item to the Council's attention. She said that she was aware of the law suit, but was not fully aware of the possible implications to our City. It was extremely helpful to have Ms. Pearsall alert her of this issue.

Ms. Pearsall thanked the Council for working on this issue.

Ms. Silber introduced an attorney who has recently joined her firm, Metody Tilev and who did a considerable amount of research on this issue.

Ms. Porter thanked him for his work.

Ms. Austin-Lane asked whether we should start seeing a change in the college's behavior as relates to HPC review. The college had been working with HPC staff members, but they discontinued the process by which the HPC would have that review.

Ms. Silber responded that this agreement would not affect that process. This agreement would cover local control within Takoma Park.

Ms. Pearsall noted that there is a situation that has come up in North Takoma regarding the day care center. The college wants to talk about changes to the property. She said that her response is that we should sit down and talk about the proposed changes, but that the day care center has to go through our review process, since it is located within the City. She expressed hope that

after they speak to us, they will not want to make changes to the driveway.

Ms. Austin-Lane said that she was more thinking about the bridge and discussions at the HPC and M-NCPPC level. She wondered what effect this would have on those discussions.

Ms. Pearsall commented that it was her impression that the college expressed a willingness to go through the HPC process. If people in Silver Spring are interested in that, they could discuss it with the college directly.

Ms. Silber did not fully share the same impression. The position in the beginning was that the college would have to go through the HPC process. This agreement, however, does not address that aspect.

Ms. Porter noted that the agreement only covers areas within the City. It does not affect anything that they are doing outside of the City, directly.

Ms. Austin-Lane confirmed the location of the college and portion of the campus that is within the Historic District (and inside the City).

Ms. Silber noted that for anything that Takoma Park controls, they would have to recognize our local authority.

Ms. Pearsall remarked that the HPC is a County function.

Ms. Porter explained the resolution, noting the agreement. If the resolution is passed, she would sign the agreement or something substantially like it on behalf of the City.

Moved by Austin-Lane; seconded by Williams.

Ms. Austin-Lane supported the college's presence in the City and expressed her desire to see them thrive. She said she is encouraged by their responsiveness to our action--that they want to remain in good standing with the City and want to be a good neighbor to the people who live near them. She added that she is happy with this outcome and the speed with which we were able to secure an agreement.

Ms. Porter commented on the efforts the City has made over the past couple of decades to work with college. There was a time when the City was feeling very threatened by the college which led to the establishment of the Historic District. The relationship between the college and City has greatly improved. The willingness of the college to sit down and hear our concerns demonstrates that improvement. What we have is something that will be very important to the City and Historic Takoma's purposes, in addition to contributing to a continued good relationship with the college.

Arlene Markowitz, Islington Street (Silver Spring) expressed support for the agreement.

Wayne Goldstein (President, Montgomery Preservation, Inc.) commended a great agreement and thanked the Council, college, and all others who worked on putting it together. He said that the Maryland Historic Trust is largely an advisory body and that he would be concerned if there is ever a conflict where the State would prevail based on a decision of that body.

Ms. Porter responded that this agreement simply deals with our local control and local entity.

Ms. Pearsall stated her understanding that the college has indicated its willingness to subject themselves to the decisions of the HPC.

Marcie Stickell asked for clarification about the amended pleadings.

Ms. Porter explained that the pleadings are an additional thing, whereby the college would change the wording that they already have on record in the law suit.

Ms. Silber added that this pleading has to do with the Montgomery College law suit where a Declaratory Judgement is being requested, related to Blair Park. The City is not a party in that law suit.

Ms. Porter restated the City's concern. We felt that the language they were using would have a negative impact on our local authority.

Ms. Silber commented that we in no way agree with their position in the law suit and had we intervened, we would have disagreed with many of their positions.

Ms. Stickle asked whether the agreement prohibits the City Council from taking a stand on anything taking place in the Jessup-Blair Park.

Ms. Porter responded in the negative.

Ms. Stickle applauded the agreement.

Ms. Silber noted that if an area is in the Takoma Park Historic District, it is entirely covered by the HPC and its process.

Ms. Stickle remarked that this momentous agreement would not have happened without the Montgomery Historic Preservation (MHP) law suit onto which the City hitched its wagon. She read the mission of the MHP and noted their continued concern about the college expansion into Jessup-Blair Park--a park that was willed to the State for public use, in perpetuity. Those in office should take Silver Spring and its residents' interests under their wing. She asked what the City Council and Historic Takoma can do for the MHP in regard to areas outside of the City

which are not covered by this agreement. At a meeting weeks ago, the college presented some 5-6 scenarios of how the bridge will be located. We asked that they meet with us about some other scenarios involving the parking garage versus the park. She requested that the City Council and Historic Takoma make a request to the college in writing and verbally, to meet with the MHP on site to discuss, face-to-face all of the various scenarios. Since the meeting two weeks ago, they have not communicated with the MHP.

Ms. Porter acknowledged the request.

Raymond Altevogt, Eastern Avenue said that about two years ago, he started attending meetings about the college expansion at which the park was discussed, and that he was very shocked to hear the current Provost Vice-President say that they have been very responsive to the community. The present administrator has twisted the history. He noted his involvement in the law suit. Mr. Altevogt said that he recently noted a tree that was cut down and related his conversation with the City's Arborist about the diameter of the tree (near Columbia, inside the City). Arborist Linkletter indicated that the college is a State entity and outside our jurisdiction. He said that while he does not know what influence the City can have regarding the take-off of the bridge into the park, but that it is in our interest to protect the nearby trees. He remarked that he took a class on the campus about two years ago and was disappointed to see the poor maintenance of the oak trees--trees that are in the City.

Resolution #2002-62 was adopted unanimously (VOTING FOR: Porter, Austin-Lane, Dawes, Maack, Stewart, Williams; ABSENT: Elrich).

**RESOLUTION #2002-62  
(Attached)**

**WORKSESSION / ADJOURNMENT / CLOSED SESSION**

The Council moved into Worksession at 8:25 p.m. and later convened in Closed Session at 10:40 p.m. Following the Closed Session, the Council adjourned for the evening.

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Closed Session 7/15/02 - Moved by Stewart; seconded by Maack. The Council voted unanimously to convene in Closed Session at 10:40 p.m. in the Conference Room of the Municipal Building. OFFICIALS PRESENT: Porter, Austin-Lane, Dawes, Elrich, Maack, Stewart, Williams. STAFF PRESENT: Finn (for a few minutes at beginning of session). The Council discussed the City Manager's evaluation and developed a draft evaluation. (Authority: Annotated Code of Maryland, State Government Article, Section 10-508(a)(12), (1)(i)).

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